

DOCKET FILE 96-98 (UNE)

EX-115 (UNE)

August 8, 1997

**By Hand**

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Written Ex Parte Presentation, CC Docket No. 96-98: Unbundled Common  
Transport Network Elements

Dear Mr. Caton:

LCI International Telecom Corp. ("LCI") hereby presents its views for the record in the above-referenced proceeding regarding the Commission's rules requiring provision by the incumbent local exchange carriers ("ILECs") of "shared" or "common" transport as an unbundled network element ("UNE"). LCI supports the positions expressed by Worldcom, Inc. in its petition for clarification filed on September 30, 1996 and its ex parte statement of May 23, 1997. LCI believes that the provision of common transport as a UNE is crucial to the development of facilities-based local competition.

As a threshold matter, the recent decision of the United States Court of Appeals for the Eighth Circuit makes it clear that it is inappropriate to view the issue of the common transport UNE as one involving a rigid distinction between "services," which are to be made available to competing local exchange carriers ("CLECs") at wholesale rates under Section 251(c)(4) of the Communications Act, and "unbundled network elements," which are to be made available under Section 251(c)(3). The court specifically rejected the argument advanced by petitioners in that case that UNEs were limited to the physical parts of an incumbent LEC's network.<sup>1</sup> UNEs are not simply facilities or equipment, but can also be the "features, functions, and capabilities that are provided by means of such facility of equipment."<sup>2</sup> Similarly, ILEC services are "features, functions, and capabilities" that are derived from the use of facilities and

<sup>1</sup> See *Iowa Utilities Board v. FCC*, No. 96-3321, (July 18, 1997) (Section II.G.1.a of the opinion also holds that simply because certain network capabilities can be labeled as "services" does not mean that they were not intended to be unbundled as network elements; Section II.G.1.g of the opinion holds that "competing carriers may obtain the ability to provide finished telecommunications services entirely through the unbundled access provisions in section 251(c)(3).").

<sup>2</sup> 47 U.S.C. § 153(29).

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equipment deployed in these carriers' networks. The Eighth Circuit's dismissal of any bright-line demarcation between ILEC services and UNEs confirms the overall approach of the *Local Competition Order*, where the Commission made it clear that it sought to enable "carriers purchasing access to unbundled elements" to "bundle services that incumbent LECs sell as distinct tariff offerings."<sup>3</sup> As a matter of statutory interpretation, therefore, it is apparent that there is no merit to the argument that because an ILEC chooses to provide particular features or functionalities as a "service," then those features or functionalities are not available to CLECs as UNEs.

Section 251(c)(2) requires "nondiscriminatory access to network elements on an unbundled basis."<sup>4</sup> In the *Local Competition Order*, the Commission determined that "nondiscriminatory access" requires that the quality of access that LECs provide to requesting carriers and the LECs provide themselves should be the same.<sup>5</sup> Unbundled access to the interoffice network that is limited to dedicated transmission paths, or to the "sharing" of dedicated transmission paths with other carriers, is significantly inferior in quality to the access to the transport capabilities of the interoffice networks that the ILECs enjoy and therefore, seriously discriminatory. The ILECs are able to transport the calls of their local exchange and exchange access customers anywhere within their interoffice networks created for this purpose. By denying CLECs equivalent access to their networks, ILECs would be engaging in gross discrimination that would severely undermine the Commission's local competition policies.

Ameritech, the primary opponent of the common transport UNE concept, argues that a CLEC should be required to designate specific trunk routes as UNEs to carry some of its calls, and rely on wholesale transport services to carry the remainder of its calls. Applying the same misplaced logic of a clear-cut distinction between ILEC-designated "services" and facilities-based UNEs that the Commission and the Court of Appeals have rejected, Ameritech maintains that CLECs should not have access to the ILECs' inter-office networks on the same basis that the ILECs use these networks. According to Ameritech, CLECs should not have unbundled access to the routing instructions already in place to switch these calls, and instead CLECs should be required to engineer their own routing tables and have them programmed into ILEC switches to be used in combination with dedicated transport routes or otherwise purchase use of an ILECs

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<sup>3</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15,499, 15,668 (para. 333) (1996) ("*Local Competition Order*").

<sup>4</sup> 47 U.S.C. § 251(c)(2) (emphasis added).

<sup>5</sup> *Id.* at 15,659 (paras. 312, 313).

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common transport capabilities as a wholesale, usage-based service on terms that would apply to resellers.<sup>6</sup>

The primary defects in Ameritech's position are that the routing and transmission capabilities of Ameritech's switches and inter-office trunks used for transport are "features, functions, and capabilities" used in the provision of Ameritech's telecommunications service and that CLECs such as LCI merely seek access to these network elements on the same terms that Ameritech grants to itself so that they can provide equivalent telecommunications service. Denial of access to the use of Ameritech's routing instructions and common transport network would seriously impair the ability of CLECs to provide such equivalent services, in contravention of Section 251(d)(2), because of the massive inefficiencies in CLEC use of the ILEC inter-office network that would result without access and the huge expenses necessary to duplicate this functionality in CLEC switches, transmission facilities, and customized routing tables.<sup>7</sup> Provision of a common transport UNE is consistent both with the statutory interpretation expressed in *Iowa Utilities Board* and with Commission policy as expressed in the *Local Competition Order*.

The Ameritech model is also based on a fundamental misapplication of what the Commission formulated in the *Local Competition Order*. Ameritech has seized on the option that the Commission created for CLECs to program ILEC switches with customized routing instructions as a condition that CLECs must meet in order to make effective use of the limited form of transport UNEs that Ameritech is willing to recognize.<sup>8</sup> Under Ameritech's approach, CLECs must program ILEC switches with their own routing algorithms to ensure optimal usage of the trunk-specific UNEs they have acquired, because otherwise these CLECs would have no means to direct their traffic in ways specific to the trunk routes they have designated. Given that the

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<sup>6</sup> See Letter of James K. Smith, Ameritech, to William F. Caton, at attachment pages 5-7 (filed May 9, 1997) (attaching Rebuttal Testimony of David H. Gebhardt before the Ill. Commerce Comm'n).

<sup>7</sup> Even to the extent that such routing instructions are proprietary, as Ameritech claims and which may or may not be correct as a legal matter, denial of access to their use for common transport purposes would significantly impair the ability of LCI and other CLECs to provide calling capabilities to their subscribers. The Eighth Circuit has upheld the Commission's rules with respect to "necessary" and "impair" standards of Section 251(d)(2). *Iowa Utilities Board* at Section II.G.1.d, *affirming Local Competition Order*, 11 FCC Rcd at 15,642-43 (paras. 283-85).

<sup>8</sup> See *Local Competition Order* at 15,709 (para. 418).

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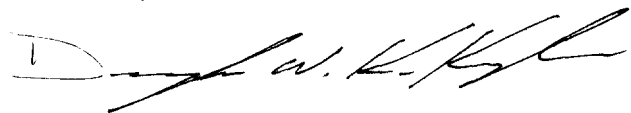
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Commission recognized that nearly 10 percent of the switches of the major ILECs could not accommodate customized routing instructions on a technically feasible basis,<sup>9</sup> it was clearly never the Commission's intent to make CLEC customized programming of ILEC switches the necessary condition for economically feasible utilization of any unbundled transport network element. Moreover, it is quite likely that the capabilities of ILEC switches that can receive customized routing instructions would soon be exhausted if multiple CLECs were obliged to pursue this approach. Such an approach would be a vastly inefficient means for CLECs to utilize the transport capabilities of ILEC inter-office networks and would greatly delay the advent of true competition in local exchange service.

These obstacles and inefficiencies would not be present where non-customized, unbundled local switching elements can be combined with unbundled common transport elements and unbundled loops to create a "network platform" that is equivalent in its component parts to those that constitute the ILECs' local exchange and exchange access offerings. Even if CLECs had available to them on the most favorable terms all the capital needed to launch a construction program to duplicate in their entirety the ILECs' interoffice networks, realization of this goal would still be years away. In the interim, the Ameritech model requiring transport UNEs to be based on designated transmission paths would ensure that few CLECs could utilize the UNE tool that Congress intended to promote local competition. The Commission should move quickly to clarify that ILECs must provide common transport UNEs without any requirement that CLECs designate specific trunk routes or customize programming in ILEC switches.

Please include a copy of this presentation in the record of this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "D. W. Kinkoph", written over a horizontal line.

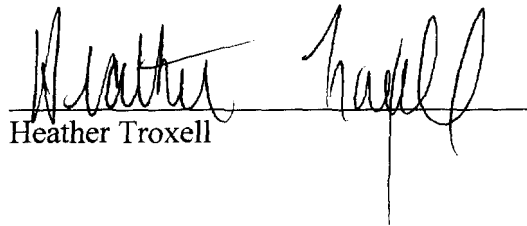
Douglas W. Kinkoph  
Director, Regulatory/Legislative Affairs

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<sup>9</sup> *Id.*

CERTIFICATE OF SERVICE

I, Heather Troxell, do hereby certify that copies of the foregoing Written Ex Parte Presentation, CC Docket No. 96-98: Unbundled Common Transport Network Elements were served this 8th day of August 1997 to the following by hand delivery.

  
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